

UNITED STATES DISTRICT COURT

Southern

District of

New York

Gorge Rivera, 88 Moriches Avenue
Mastic, NY 11950

V.

Metro-North Commuter Railroad, 347 Madison
Avenue, New York, NY 11017

SUMMONS IN A CIVIL ACTION

08 CV 4853
CASE NUMBER:

JUDGE SWEET

TO: (Name and address of Defendant)

Metro-North Commuter Railroad
Legal Department
347 Madison Avenue
New York, NY 10017

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Law Offices of Kantor & Godwin, PLLC,
5800 Main Street
Williamsville, NY 14221

an answer to the complaint which is served on you with this summons, within Thirty (30) days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

MAY 23 2008

J. MICHAEL McMAHON

CLERK

(By) DEPUTY CLERK

DATE

RETURN OF SERVICE

Service of the Summons and complaint was made by me ⁽¹⁾	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served:
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left:
- ☐ Returned unexecuted:
- ☐ Other (specify):

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL \$0.00
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DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

Signature of Server

Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

CIVIL COVER SHEET

JUDGE SWEET

08 CV 4853

This civil cover sheet and the information contained herein neither replace nor supplement the filing and service of the required papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

Gorge Rivera, 88 Moriches Ave., Mastic, NY 11950

DEFENDANTS

Metro-North Commuter Railroad, 347 Madison Ave., New York, NY 10017

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Law Offices of Kantor & Godwin, PLLC, 5800 Main St.,
Williamsville, NY 14221

ATTORNEYS (IF KNOWN)

Metro-North Commuter Railroad, Legal Dept., 347 Madison Ave., New York, NY 10017

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

FEDERAL EMPLOYERS' LIABILITY ACT, 45 USC Section 51, et seq.

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes ☐ Judge Previously Assigned ☐

If yes, was this case Vol ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

RECEIVED
MAY 23 2008
U.S.D.C. S.D. N.Y.
CASHIERS

TORTS		FORFEITURE/PENALTY	OTHER STATUTES
CONTRACT	PERSONAL INJURY	PERSONAL INJURY	
[] 110 INSURANCE	[] 310 AIRPLANE	[] 610 AGRICULTURE	[] 400 STATE
[] 120 MARINE	[] 315 AIRPLANE PRODUCT LIABILITY	[] 620 FOOD & DRUG	[] REAPPORTIONMENT
[] 130 MILLER ACT	[] 320 ASSAULT, LIBEL & SLANDER	[] 625 DRUG RELATED SEIZURE OF PROPERTY	[] 410 ANTI TRUST
[] 140 NEGOTIABLE INSTRUMENT	[] 330 FEDERAL EMPLOYERS' LIABILITY	[] 630 LIQUOR LAWS	[] 430 BANKS & BANKING
[] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT	[] 340 MARINE LIABILITY	[] 640 RR & TRUCK	[] 450 COMMERCE/CC RATES/ETC
[] 151 MEDICARE ACT	[] 345 MARINE PRODUCT LIABILITY	[] 650 AIRLINE REGS	[] 460 DEPORTATION
[] 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)	[] 350 MOTOR VEHICLE	[] 660 OCCUPATIONAL SAFETY/HEALTH	[] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
[] 153 RECOVERY OF OVERPAYMENT OF VETERANS BENEFITS	[] 355 MOTOR VEHICLE PRODUCT LIABILITY	[] 680 OTHER	[] 480 CONSUMER CREDIT
[] 160 STOCKHOLDERS SUITS	[] 360 OTHER PERSONAL INJURY		[] 490 CABLE/SATELLITE TV
[] 180 OTHER CONTRACT		LABOR	[] 810 SELECTIVE SERVICE
[] 195 CONTRACT PRODUCT LIABILITY		[] 710 FAIR LABOR STANDARDS ACT	[] 850 SECURITIES/COMMODITIES/EXCHANGE
[] 198 FRANCHISE		[] 720 LABOR/MGMT RELATIONS	[] 875 CUSTOMER CHALLENGE
		[] 730 LABOR/MGMT REPORTING & DISCLOSURE ACT	[] 881 AGRICULTURE ACTS ECONOMIC STABILIZATION ACT
		[] 740 RAILWAY LABOR ACT	[] 891 ENVIRONMENTAL MATTERS
		[] 790 OTHER LABOR LITIGATION	[] 894 ENERGY ALLOCATION ACT
		[] 791 EMPL RET INC SECURITY ACT	[] 895 FREEDOM OF INFORMATION ACT
REAL PROPERTY	ACTIONS UNDER STATUTES		[] 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCEES TO JUSTICE
[] 210 LAND CONDEMNATION	CIVIL RIGHTS		[] 950 CONSTITUTIONALITY OF STATE STATUTES
[] 220 FORECLOSURE	[] 441 VOTING	PRISONER PETITIONS	[] 880 OTHER STATUTORY ACTIONS
[] 230 RENT LEASE & EJECTMENT	[] 442 EMPLOYMENT	[] 510 MOTIONS TO VACATE SENTENCE	
[] 240 TORTS TO LAND	[] 443 HOUSING	[] 530 HABEAS CORPUS	
[] 245 TORT PRODUCT LIABILITY	[] 444 ACCOMMODATIONS WELFARE	[] 535 DEATH PENALTY	
[] 280 ALL OTHER REAL PROPERTY	[] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT	[] 540 MANDAMUS & OTHER	
	[] 446 AMERICANS WITH DISABILITIES - OTHER	[] 550 CIVIL RIGHTS	
	[] 440 OTHER CIVIL RIGHTS	[] 555 PRISON CONDITION	

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE: _____

DEMAND \$ _____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint
JURY DEMAND: ☒ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- ☒ 1 Original Proceeding
 ☐ 2a. Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ 2b. Removed from State Court
 AND at least one party is a pro se litigant

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
 ☐ 4 DIVERSITY

IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1332, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

	PTF	DEF		PTF	DEF		PTF	DEF
CITIZEN OF THIS STATE	[]	[]	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	[]	[]	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	[]	[]
CITIZEN OF ANOTHER STATE	[]	[]	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[]	[]	FOREIGN NATION	[]	[]

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Gorge Rivera
 88 Moriches Ave.
 Mastic, NY 11950
 Suffolk County

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Metro-North Commuter Railroad
 347 Madison Avenue
 New York, NY 10017
 New York County

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ FOLEY SQUARE
 (DO NOT check either box if this a PRISONER PETITION.)

DATE 5/21/08

SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO

X YES (DATE ADMITTED Mo. 7 Yr. 2000)

RECEIPT #

Attorney Bar Code # R-62201

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge ELLIS is so Designated.

J Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

JUDGE SWEET
UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

08 CV 4853

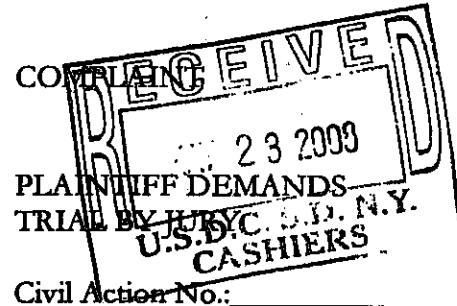
GORGE RIVERA
88 Moriches Avenue
Mastic, New York 11950

Plaintiff

vs.

METRO-NORTH COMMUTER RAILROAD
347 Madison Avenue
New York, NY 10017

Defendant.



Civil Action No.: _____

NOW COMES the Plaintiff, GORGE RIVERA, by and through his attorneys, THE LAW OFFICES OF KANTOR & GODWIN, PLLC, for his Complaint against the Defendant, METRO-NORTH COMMUTER RAILROAD, herein alleges:

1. That this action is being brought against the Defendant, METRO-NORTH COMMUTER RAILROAD. (hereinafter "METRO-NORTH") pursuant to the provisions of the Federal Employer's Liability Act, Title 45 USC § 51, et seq. and that the amount in controversy exclusive of interest, exceeds \$75,000
2. That at all times hereinafter, the Plaintiff, GORGE RIVERA, was and is a resident of the Town of Mastic, County of Suffolk, and State of New York.
3. That at all times hereinafter mentioned, the Defendant, METRO-NORTH was and still is a public benefit corporation duly organized, created and existing under the laws of the State of New York, authorized to do business in the State of New York, and a common carrier in interstate transportation and commerce by railroad.

4. The Defendant, METRO-NORTH, has tracks, operates trains, and does business within the the State of New York and maintains a principle place of business within the County of New York and State of New York with offices located at 347 Madison Avenue New York, N.Y. 10017.

5. That at all times hereinafter mentioned, the Plaintiff, GORGE RIVERA, herein is a employee of the Defendant, METRO-NORTH as that term is defined under Section 45 U.S.C. §51, et seq. and as such, is a conductor for the Defendant and is engaged by the Defendant to perform duties in the furtherance of its business interests and movement of freight in interstate and foreign commerce by Defendant, railroad, METRO-NORTH.

6. That this Court has proper jurisdiction as established by 45 U.S.C. §56 and 28 U.S.C. §1331.

7. That on or about the 7th day of June, 2005, the Plaintiff, GORGE RIVERA was assigned to work out of New York, New York in furtherance of Defendant, METRO-NORTH'S business in interstate commerce when he sustained injuries as a result of Defendant, METRO-NORTH's negligence.

8. That as a result of the negligence of the Defendant, METRO-NORTH, its agents, servants, employees with respect to the negligent and careless operation of its business with respect to the failure of the Defendant to properly provide Plaintiff with a safe place to work pursuant to the Federal Employers' Liability Act, 45 U.S.C. §51, et seq. and the federal and state rules and regulations promulgated thereunder; failure of Defendant to properly warn Plaintiff of the possible and potential hazards to his health; the failure of the Defendant to inspect and maintain its property in a proper and safe manner; the failure of the Defendant to properly operate the job and in general reckless, careless and negligent manner in which the Defendant and its agents carried on its business, Plaintiff was caused to suffer serious and permanent

injuries while employed by the Defendant, METRO-NORTH, on or about the 7th day of June, 2005.

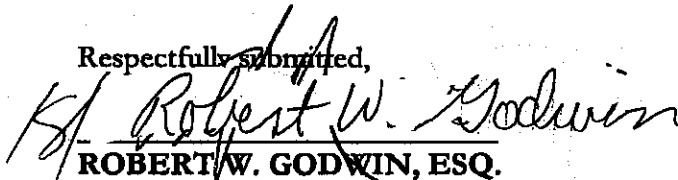
9. That as a result of the Defendant, METRO-NORTH's negligence, the Plaintiff was caused to suffer severe, permanent, personal and painful physical and emotional injuries, mental anguish, disability, denial of social pleasure and enjoyment of life, change of lifestyle, and has and will be caused to lose time from his railroad employment and will incur expenses and suffer additional damages into the future.

10. That the Plaintiff, GORGE RIVERA demands a trial by jury on all issues.

WHEREFORE, the Plaintiff, GORGE RIVERA, demands a money judgment against the Defendant, METRO-NORTH COMMUTER RAILROAD for whatever amount said Plaintiff is found to be entitled to, together with the costs and disbursements of this action.

Dated: May 21, 2008
Williamsville, New York

Respectfully submitted,



ROBERT W. GODWIN, ESQ.

Law Offices of Kantor & Godwin, PLLC

Attorneys for Plaintiff

5800 Main Street

Williamsville, New York 14221

(716) 626-0404

kantorgodwin@roadrunner.com